the person ordering at Carthage with instructions to collect the price upon delivery; upon the arrival of the package at Carthage, the local agent of the express company, knowing the contents to be intoxicating liquor, delivered the package to the consignee and collected the price, the express charges and the charge for remitting the price to the consignor. In a prosecution of the express agent for a sale of the liquor in violation of the ordinance, *Held*, that the agent is not guilty. *City of Carthage* v. *Duvall* (1903), 202 Ill. 234. Same point *City of Carthage* v. *Munsell* (1903), 203 Ill. 474.

The question, when the title passes to goods sent C. O. D., has given the courts considerable difficulty. See MECHEM ON SALES, §§ 793, 794. It has been insisted, in one line of cases, that the possession of the carrier is the possession of the seller, and that the transfer of the title—the sale—does not take place until the goods are delivered to the consignee, upon his paying for them, in pursuance of the instructions of the shipper: *State* v. *O'Neil*, 58 Vt. 140, 56 Am. Rep. 557; *State* v. *Wingfield*, 115 Mo. 428, 22 S. W. 363, 37 Am. St. 406; *United States* v. *Shriver*, 23 Fed. Rep. 134. 31 Alb. L. Jour. 163; *Crabb* v. *State*, 88 Ga. 584. See also *United States* v. *Cline*, 26 Fed. Rep. 515; *State* v. *Express Co.*, 70 Iowa 271; *Wagner* v. *Hallack*, 3 Colo. 176. Other cases apply the usual rule that the title passes upon the delivery to the carrier: *State* v. *Intox. Liquors*, 73 Me. 278; *State* v. *Peters*, 91 Me. 31, 39 Atl. 342: *Commonwealth* v. *Fleming*, 130 Pa. St. 138, 18 Atl. 622, 17 Am. St. 763, 5 L. R. A. 470; *State* v. *Carl*, 43 Ark. 353, 51 Am. Rep. 565; *Pilgreen* v. *State*. 71 Ala. 368; *Brechwald* v. *People*, 21 Ill. App. 213; *Norfolk So. R. Co.* v. *Barnes*, 104 N. C. 25; *Crook* v. *Cowan*, 64 N. C. 743; *State* v. *Flanagan*, 38 W. Va. 53, 22 L. R. A. 430, 45 Am. St. 832; *State* v. *Cairns*, 64 Kans. 782, 68 Pac. 621; *James* v. *Commonwealth*, 102 Ky. 108, 42 S, W. 1107. The weight of authority seems to be very clearly with the latter group of cases, and to them must now be added the Illinois cases above referred to. Under such a rule the express agent can not be convicted of a *sale* in violation of a local law.

STREET RAILWAYS—RIGHT TO USE STREETS—RIGHTS OF ABUTTING LOT OWNERS.—Plaintiff seeks to restrain defendant electric railway company from constructing or putting its tracks, poles, etc., in the street in front of plaintiff's lot and dwelling. Defendant company was duly authorized by state and municipal authorities to lay said tracks. *Held*, that defendant had no right to construct its tracks, or place any burden on plaintiff's half of the street in front of his lot, without compensation. *Lange* v. *LaCrosse & E. Ry. Co.* (1903), — Wis. —, 95 N. W. Rep. 952.

This case seems opposed to the general doctrine that an electric railway is not an additional servitude for which abutting owners may recover compensation. Says the court: "The plaintiff has the right to compensation, as a condition precedent to the placing of such tracks in front of his premises." A few of the cases opposed to this opinion are: *Lockhart et al* v. *Ry. Co.*, 139 Pa. St. 419. *Taggart et al* v. *Newport Ry. Co.*, 16 R. I. 668. *Detroit Ry. Co.* v. *Mills*, 85 Mich. 634. *Manufacturing Co.* v. *Ry. Co.*, 95 Ky. 50. LEWIS EMINENT DOMAIN, p. 262, note.

TELEGRAPH COMPANY—FAILURE TO DELIVER TELEGRAM—MENTAL ANGUISH.—The plaintiff sent a telegram to his wife announcing the serious illness and approaching death of her son, but which the defendant company failed to promptly transmit and deliver. In an action to recover damages for mental pain and anguish of the wife, *Held*, damages for mental pain and suffering could be recovered, though unattended by any injury to person, property, health, or reputation. *Graham* v. *W. U. Tel. Co.* (1903), — La. — 34 S. Rep. 91.

The doctrine of the principal case was first announced in *So Relle* v. *Tel. Co.*, 55 Tex. 308, 40 Am. Rep. 805, and although the decision rests in part upon statute, the reasoning of the court sustains the modern and broader view. Such damages have generally been held too remote and uncertain, but recently there has been a marked tendency toward their allowance. *Mentzer* v. *Tel. Co.*, 93 Ia. 752, 57 Am. St. Rep. 294; 1 SUTHERLAND DAMAGES, 2d ed. pp. 156-157. The common law doctrine, denying the recovery of damages for mental pain and nervous shock, where there is no immediate physical harm, as set forth in *Lynch* v. *Knight*, 9 H. L. 577 and *Commissioners* v. *Coultas*, L. R. 13 App. Cas. 222, has of late been to some extent disregarded in England, and a broader doctrine announced. *Bell* v. *G. N. R. Co.*, 26 L. R. Ir. 428; *Wilkinson* v. *Downton* (1897), 2 Q. B. 57; *Dulieu* v. *White* (1901), 2 K. B. 669.

The principal case, however, appears opposed to the weight of authority in this country. *Chase* v. *Tel. Co.*, 44 Fed. 554; *Kester* v. *Tel. Co.*, 55 Fed. 603; *Wadsworth* v. *Tel. Co.*, 86 Tenn. 716, 6 Am. St. Rep. 864, Lurton J., dissenting.

TORT—ACTION AGAINST THE MAKER OF A CHATTEL BY ONE NOT A PARTY TO THE CONTRACT OF PURCHASE, FOR PERSONAL INJURY DUE TO THE DEFECTIVE CONDITION OF SUCH CHATTEL.—Plaintiff alleged that the defendant was the maker of self-feeding threshers, the band-cutting and self-feeding apparatus being placed immediately in front of the fast revolving cylinder; that this part of the machine was covered by a light sheet iron covering, without support except where it fitted upon other parts of the machine; that it was soft and pliable; that in operating the machine it was necessary to walk over it from the top of the main part, and was placed there for that purpose; that it was imminently and necessarily dangerous to the life of those who used it in the ordinary way; that the dangerous character of this covering was known by the defendant when it was supplied by him to the purchaser; that its unfitness could not be easily discovered by those operating the machine; that plaintiff was in the employment of the purchaser, and in the course of his duty of superintending the feeding and oiling of the machine, he walked over this covering in the usual way; that this immediately gave way and his leg was caught by the cylinder and crushed to a point above the knee. Upon demurrer by the defendant, that it owed no duty of care to the plaintiff, *Held*, Sanborn, J., overruling the district court decision, that plaintiff had a right of action; *Huset* v. *Case Threshing Machine Co.* (1903), (C. C. A. 8th Circuit) 120 Fed. R. 865.

The court lays down the following rules: "The *general rule* is that a contractor, manufacturer, or vendor is not liable to third parties who have no contractual relations with him for negligence in the construction, manufacture, or sale of the articles he handles." To this there are *three exceptions*: (1) "An *act of negligence* of a manufacturer or vendor which is imminently dangerous to the life or health of mankind, and which is committed in the preparation or sale of an article intended to preserve, destroy, or affect, human life, is actionable by third parties who suffer from the negligence." (2) "An owner's *act of negligence* which causes injury *to one who is invited by him* to use his defective appliance upon the owner's premises, may form the basis of an action against the owner." (3) "One who sells or delivers an article *which he knows* to be imminently dangerous to life or limb to another without notice of its qualities is liable to any person who suffers an injury therefrom which might have been reasonably anticipated, whether there were any contractual relations between the parties or not."